

## **Appendix A**

# In the Supreme Court

OF THE

## United States

OCTOBER TERM, 1941

**No.**

CITY OF OAKLAND, a Municipal Corporation,  
*Petitioner,*  
vs.  
UNITED STATES OF AMERICA,  
*Respondent.*

### BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

I.

#### OPINIONS OF THE COURTS BELOW.

Of Circuit Court of Appeals (Tr. 52-65; 124 F. 2d 959). Of District Court (Tr. 30-36; ~~37~~ <sup>72</sup> F. Suppl. 297).

II.

#### JURISDICTION.

A statement of the basis of this Court's jurisdiction is printed in subdivision II of the petition (page 3, *supra*).

## III.

## STATEMENT OF THE CASE.

Subdivision I of the petition (page 1, *supra*) comprises our statement of the facts of the case.

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## IV.

## SPECIFICATION OF ERROR.

But one error is specified, namely, that the Circuit Court of Appeals erred in affirming the District Court's judgment (and the order denying the petitioner's motion to vacate that judgment), because that judgment was rendered without either process, or appearance, or any opportunity to defend.

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## V.

## ARGUMENT.

Summary of Argument.

Our reasons for asking for the allowance of a writ of certiorari are the three reasons listed in subdivision IV of the petition (page 5, *supra*).

Briefly, these reasons are that, when the Circuit Court of Appeals affirmed the District Court's judgment, rendered without either process, or appearance, or any opportunity to defend, (1) it sanctioned such a departure from the accepted and usual course of judicial proceedings as to call for the exercise of this Court's power of supervision, (2) its decision was in direct conflict with

an applicable decision of this Court, and (3), if it is assumed—as the Circuit Court of Appeals apparently assumed—that prior decisions are not controlling, then the question, as to the right of the property owner to be heard on the judicial issues involved in an eminent domain proceeding, is an important question of federal law that should be settled by this Court.

We shall not argue herein the merits of the four “questions presented” (Petition, page 4, *supra*), although we deem it appropriate to suggest that the importance of those questions is a further reason for this Court to review this case.

Our argument herein will be presented in three subdivisions, directed to the three reasons, listed above, for the allowance of a writ of certiorari.

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#### POINT A.

##### **THE DEPARTURE FROM THE ACCEPTED AND USUAL COURSE OF JUDICIAL PROCEEDINGS.**

There is nothing more basic and unalterable, in civilized man's administration of justice, than the requirement that no court shall render any judgment against a party, without first having given him an opportunity to defend. This requirement has been recognized by all men who cherish justice, at all times since man began to emerge from barbarism, and to devise the administration of justice, as a method of settling disputes between man and man, and between man and the State—as a substitute for primitive man's method of settling disputes—as a substitute for combats, for fights and for wars.

In rendering its judgment, the District Court departed completely from the accepted and usual course in judicial proceedings—a course as long-standing as the administration of justice itself. And, by affirming that judgment, and the order denying the motion to vacate that judgment, the Circuit Court of Appeals ~~sanc~~tioned such complete departure.

That such a departure calls for an exercise of this Court's power of supervision, is a proposition that does not appear to call for any further exposition.

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#### POINT B.

##### THE CIRCUIT COURT OF APPEALS DECISION IN CONFLICT WITH AN APPLICABLE DECISION OF THIS COURT.

Actual court decisions, to the effect that a judgment without an opportunity to defend is void, are rare, for the obvious reason that our judges simply do not knowingly render such judgments. In fact, it is necessary to go back to the excesses incident to our Civil War to find a judgment that prompted the rendition of such a decision.

In 1864, the District Court of the United States for the Eastern District of Virginia rendered such a judgment; it was rendered against a "rebel", to effect the condemnation of his property, because he was a "rebel", and as provided by an Act of Congress.

In *Windsor v. McVeigh* 93 U. S. 274, this Court decided that, because that judgment was rendered without giving the defendant an opportunity to defend, it was not

merely voidable, but "absolutely void" (page 282), and that such a judgment is "contrary to the first principles of the social compact and the right administration of justice" (page 277), and "a blot on our jurisprudence and civilization" (page 277) and "a solemn fraud" (page 281).

Because the decision of the Circuit Court of Appeals, that the District Court's judgment is a valid judgment, is in direct conflict with this applicable decision by this Court, is the second reason relied on by the petitioner for the allowance of a writ of certiorari herein.

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#### POINT C.

**IF IT IS SUI GENERIS, THE QUESTION AS TO THE  
RIGHT OF THE PROPERTY OWNER, TO BE  
HEARD IN AN EMINENT DOMAIN PROCEEDING,  
IS AN IMPORTANT QUESTION OF FEDERAL LAW  
THAT SHOULD BE SETTLED BY THIS COURT.**

The Circuit Court of Appeals does not appear to question the soundness of the rule stated and applied in *Windsor v. McVeigh* 93 U. S. 274, *supra*. Its opinion (Tr. 52) does not refer to that decision, or to that rule. Nor does it cite any other decision by this Court, or by any other court, either supporting, or purporting to support, any claim of any distinction between the right of a defendant to be heard in such a case as this, and his right to be heard in any other case. Apparently, the Circuit Court of Appeals has treated this question as being *sui generis*.

If the question is not *sui generis*, it is governed by the rule applied in *Windsor v. McVeigh*, *supra*. If it is *sui generis*, it is an important question of federal law that has not been, but should be, settled by this Court. On either theory, the allowance of a writ of certiorari herein would appear to be proper.

The importance of the question, as to the right to a hearing in an eminent domain proceeding, before a permanent deprivation is adjudicated, is particularly evident in this case, involving as it does the attempted permanent deprivation of property, belonging to a municipality (Tr. 7)—an instrumentality of a sovereign State—and held in trust for the use of the people of the State for the necessary public purposes of commerce and navigation.<sup>1</sup>

Treating the question as being *sui generis*, the Circuit Court of Appeals decided that the judgment of condemnation was properly rendered forthwith, and without process or hearing, *solely because of the urgency of the needs of the United States*. It reasoned that the United States should be permitted

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1.

*Constitution of California*, Art. XV, Sec. 3 (adopted in 1879): "All tide-lands within two miles of any incorporated city or town in this state, and fronting on the waters of any harbor, estuary, bay, or inlet, used for the purposes of navigation shall be withheld from grant or sale to private persons, partnerships, or corporations". This constitutional provision makes the property involved in this proceeding subject to a perpetual "trust . . . in which the whole people are interested" (*Boone v. Kingsbury* 206 Cal. 148, 189, 273 Pac. 797, 815).

"to proceed with necessary public works without being hampered by delays that might occasion great and irreparable injury" (Tr. 63).

It said that this petitioner

"insists that it should have the right to halt the progress of the work until it can be heard in the various courts to prevent the Government from taking this necessary action. The sovereign state should not be reduced to such impotency" (Tr. 63).

And it reasoned that,

"when the greatest combination of autocratic powers of all time is ruthlessly engaged in an attempt to strangle the liberties of the world, to delay action in achieving military objectives may well be fatal" (Tr. 63).

We shall not argue herein the merits of the question as to the right of a trustee for the people of a sovereign State, or of any other property owner, to be heard in an eminent domain proceeding prosecuted by the United States. But we deem it appropriate, in support of our claim that this question should be considered and decided by this Court, to list the following points, each of which appears to us to cast doubt on the soundness of the Circuit Court of Appeals' answer to this question, and all of which, we respectfully suggest, are of sufficient substance to justify a hearing by this Court, for the purpose of determining whether or not a departure should be permitted herein from what has heretofore been universally accepted as fundamental law:

- (1) The Circuit Court of Appeals has failed to distinguish between (a) an order putting the condemnor

into possession *pending* final judgment, and (b) a final judgment of condemnation; while a delay in the first *would*, a delay in the second would *not*, "halt the progress of the work" (Tr. 63);

(2) The petitioner recognizes that both federal and state law gives the condemnor the right to immediate possession; the petitioner has never questioned that right of the United States in this case; therefore, the petitioner has never sought "to halt the progress of the work" (Tr. 63)—only "to halt" the final adjudication that it is deprived of its property in perpetuity;

(3) The Circuit Court of Appeals expressly recognizes the petitioner's right to be heard (Tr. 58); and it recognizes that "due process", as guaranteed by the Fifth Amendment, *requires* "that the owner be given an opportunity to be heard at some stage of the proceedings upon reasonable notice of the pending suit" (Tr. 64); from this it would appear to follow that the question is merely whether the guaranteed hearing should be accorded before, or after, the adjudication of the issue on which the hearing is guaranteed; but a hearing *after* judgment would take at least as long as a hearing *before* judgment—a factor that would appear still further to remove from the case the urgency element, so largely stressed by the Circuit Court of Appeals; and the petitioner is not particularly reassured by the suggestion of a hearing, *after* an adjudication of all the issues to which the hearing relates, (a) because no procedure for such a hearing is known to the law, and the Congress has never conferred on the District Courts jurisdiction to hold such a hearing, (b) because the suggestion does not

come from the *District* Court, which court concedes to the petitioner only the right to attack its adjudication, in a suit in equity, on the ground of fraud (Tr. 35), and (c) because the Circuit Court of Appeals failed to instruct the District Court to accord to the petitioner *any* hearing on *any* of the issues already adjudicated (Tr. 65); and,

(4) "When the greatest combination of autocratic powers of all times is ruthlessly engaged in an attempt to strangle the liberty of the world" (Tr. 63), it is not a propitious time for liberty-loving people to throw overboard anything so fundamental, and so vital to the preservation of their liberties, as the right to be heard before judgment; certainly, it is not a proper time for them to make such a sacrifice before the need therefor has been given full consideration by their highest court.

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#### CONCLUSION.

It is respectfully submitted that this case is one calling for the exercise by this Court of its supervisory powers, by granting a writ of certiorari, and thereafter reviewing and reversing said decision of the Circuit Court of Appeals.

Dated, Oakland, California, March 23, 1942.

Respectfully submitted,

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